THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NOS.1883, 1884 & 4483 OF 2006

DATED: 08 - 08-2006

Writ Petition No.1883 of 2006

Between:

M/s.Galaxy Rockmin Pvt.Ltd., … petitioner

And

The Govt., of A.P., rep by
Secretary, Industries & Commerce Dept.,
And Others. … Respondents

Writ Petition No.1884 of 2006:

Between:

M/s.Nataraj Enterprises Granites … Petitioner

And

The Govt., of A.P., rep by
Secretary, Industries & Commerce Dept.,
And Others. … Respondents

Writ Petition No.4483 of 2006:

Between:

M/s.Orison Granites … petitioner

And

The Govt., of A.P., rep by
Secretary, Industries & Commerce Dept.,
And Others. … Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NOS.1883, 1884 & 4483 OF 2006

COMMON ORDER:

1. All these writ petitions are being disposed of by a common order since the same order is impugned in all these writ petitions.

2. M/s.Galaxy Rockmin Private Limited represented by its Director filed W.P.No.1883 of 2006 praying for writ of certiorari calling for records in Memo No.14796/M.II(1)/2005-06 dated 19.1.2006 and quash the same as arbitrary, illegal, unjust and violative of principles of natural justice and contrary to A.P.Minor Mineral Concession Rules, 1966 and Granite Conservation Rules 1999 and pass such other suitable orders.

3. W.P.No.1884 of 2006 is filed by M/s.Natraj Enterprises Granite Managing Partner represented by the General Power of Attorney Holder, where in the relief prayed for is a writ of certiorari calling for records in Memo No.14796/M.II(1)/2005-06 dated 19.1.2006 and quash the same. Virtually the grounds raised in this writ petition also substantially the same.

4. W.P.No.4483 of 2006 is filed by M/s.Orison Granites represented by its partner praying for the similar relief as aforesaid and the grounds raised in the said writ petition also appear to be substantially the same. The first respondent filed counter affidavit in W.P.No.1883 of 2006. Respondents 5 to 7 in W.P.No.1884 of 2006 filed counter affidavit and substantially the stand taken by these parties being almost the same, in all these writ petitions, these counter affidavits be treated as common counter affidavits in all these writ petitions.

5. Smt.Shobha, the learned counsel representing the writ petitioners had taken

this Court through the impugned order and would maintain that the order made by the first respondent is in violation of principles of natural justice as the revision applications filed by the respondents 5 to 7 were not served on the petitioners and on 15.10.2005 petitioner submitted his representation for copies of application to file counters and argue the matter and no arguments, in fact, were advanced on 15.10.2005. The learned counsel also would maintain that the first respondent failed to consider that implead petition was filed by another company by name M/s.Orison Granites and no implead application is filed by the petitioners as it appear from the telegram that the petitioner was shown as party respondent in the revision. The learned counsel would maintain that the first respondent should have communicated the revision applications, inasmuch as the petitioners would be entitled to the same in the light of Rule-35-C(5) of the A.P.Minor Minerals Concession Rules 1966 (hereinafter, in short, referred to as 'the Rules' for the purpose of convenience). The learned counsel also had drawn the attention of this Court to Rule 35-C(5) and also Rule 12(2) of the Rules and had pointed out to Rule 12(5) of Granite Conservation Rules 1999 and made elaborate submissions in this regard. The learned counsel also had drawn the attention of this Court to several factual details and would maintain that the first respondent failed to consider that the entire area in survey No.178 is granite bearing area and respondents 5 to 7 are not the finders of quarry as already a quarry lease was granted in favour of M/s.Humpy Enterprises and they are operating the same. The learned counsel made a stress on the aspect of the disposal of revision in undue haste and would point out that the revision application was filed on 7.10.2005 and telegram was issued on 8.10.2005 without communicating the copies and without giving a

hearing though on 15.10.2005 the petitioner requested for copies of the revision application for filing counter and without atleast affording an opportunity of hearing arguments the same was adjourned and the revision applications were disposed of in short span of 7 days and thus by virtue of non-affording opportunity to file counters to the affected parties the impugned order is vitiated. The learned counsel also would maintain that the first respondent erred in dividing the area into two parts and reallocating one part to the petitioner and another to the respondent, in spite of there being no priority to the respondents and there is no provision under Rules for such division. The learned counsel also placed reliance on certain decisions like W.P.No.7245 of 1998, ***Choice Enterprises, Chittoor Vs Director of Mines and Geology, Government of A.P., Hyderabad and Others***[1], ***Dr.V.V.Sai Naresh and another Vs Union of India and Others***[2]

6. On the contrary, the learned Government Pleader for Industries representing the first respondent had taken this Court through the detailed counter affidavits filed and would maintain that though the revisions were disposed of within a short time, reasonable opportunity in fact had been given. The learned Government Pleader also would maintain that the personal hearing was given on 15.10.2005 to all the concerned and the revision petitioners as well as implead parties attended for the hearing and presented their grievance and after giving a hearing and after perusing the records, the impugned order was made and hence, the same is not in violation of principles of natural justice or Rule-35 of the Rules governing the field. The learned counsel also would submit that the petitioner attended for hearing on 15.10.2005 along with respondents 5 to 7 and had put forth his grievance before the revisional authority and in spite of the letter of the petitioner dated 15.10.2005 he

admitted that he is aware of the facts of the case and consented for hearing for early disposal and that he would abide by the decision of the revisional authority and he had not raised any objection for hearing of the case. Hence, the learned Government Pleader would contend that the contention of the petitioner that no arguments were advanced on 15.10.2005 is an unsustainable stand. The learned Government pleader for Industries also would contend that it is a fact that M/s.Orison Granites had filed implead petitions on 22.12.2005 and on 5.1.2006 requesting the Government to implead them in the revision applications filed by the respondents 5 to 7, but the Government had not invited him for hearing held on 15.10.2005 as his application for quarry lease was not a priority one among the applications of the petitioners and respondents, and their rights were not affected as they are later applicants, hence priority position was informed to the implead petitioners. The learned Government Pleader also would maintain that the Government had invited all the parties connected with the issue, i.e., grant of quarry lease in survey No.178 of Konisa village, Gajapathinagaram mandal, Vizianagaram district who are on priority to attend the hearing and nobody had been shown in the Government telegram as respondents as pointed out by the petitioner. The learned Government Pleader also would maintain that it is no doubt true that as per Rule-35-C(5) of the Rules, the copies of the revision application shall be sent to each of the parties impleaded in the revision application. However, the learned counsel would submit that when it came to the notice of the Government that D.M.G. Proceedings No.35464/R1-2/2003, dated 29.7.2005 were not in accordance with the Rules or Law in force, the government intended to review the matter and all connected quarry lease applications had been called for hearing on 15.10.2005 by

its telegram dated 7.10.2005 and after issuing of telegram only, the revision applications filed by R.5 to R.7 were reviewed, but however the revision applications were also heard on 15.10.2005 with the consent of the petitioner in W.P.No.1883 of 2006. The learned Government Pleader also would contend that quarry lease application of respondents 5 to 7 are made on 18.8.2003 and whereas the application made by the petitioner is 27.10.2003 and thus the petitioner's application is a later application and respondents 5 to 7 came forward and applied for colour granite when the material was found to be useful for better purpose. The learned Government Pleader also would maintain hat the orders issued by the Deputy Director of Mines and Geology, Vishakapatnam dated 20.6.2005 in respect of respondents 5 to 7 and also Director of Mines and Geology, Hyderabad vide his proceedings No.35464/R1-2/2003, dated 29.7.2005 are not in conformity with the priority of the applications. The learned Government Pleader also would contend that it is only respondents 5 to 7 in revision, who found the area in survey No.178, Konisa village measring an extent of 80.150 Hectors and the same was classified as Dibba Poramboke and they got No Objection Certificate from the Mandal Revenue Officer of Gajapathinagaram vide letter No.108/2004/T dated 12.3.2004. The learned Government Pleader also would contend that there may be a quarrying activity earlier in a part of the above said survey No.178. The learned Government Pleader for Industries also would further maintain that the Government telegram was issued on 8.10.2005, however, revision applications of respondents 5 to 7 in writ petitions, were received by the Government on 8.10.2005 and the copies were served on petitioner through D.M.G., on 10.10.2005 and if the petitioners had not received the revision applications he should have raised objections during the

hearing and should have requested for adjournment of hearing. But however, he consented for hearing on 15.10.2005 and attended for hearing and had put forth his grievances before the revisional authority. The learned Government Pleader also explained the factual details in relation to dividing the area and the reallocation thereof and had pointed out to several other factual details and would maintain that absolutely the order made is in conformity with the Rules and hence, the impugned order need not be disturbed in any way.

7. Sri C.Raghu, the learned counsel representing R5 to R7 had taken the Court through the counter affidavit filed in W.P.No.1884 of 2006 and would maintain that the first respondent found that the entire available land is in excess and the contention of the petitioner that the area is only 31 hectors is wrong. In fact, the petitioner without submitting a scaled map has shown more than 60 hectors on ground as 31 hectors on map. The learned counsel also would maintain that the first respondent found that the land is in excess and in fact had provided benefit to the petitioner by giving first option. The first respondent ought to have rejected the application of the petitioner since required documents were not submitted along with the applications and more over found that excess land is available which in fact established that the petitioner tried to mislead the authority. The learned counsel also would maintain that a perusal of the order dated 191.2006 clearly go to show that a personal hearing was conducted on 15.10.2005 with all the parties concerned. Several other factual details also had been narrated and the counsel would maintain that inasmuch as full opportunity was given it cannot be said that the impugned order is in violation of Rule 35-C(5) of the Rules. The counsel also placed strong reliance on ***Andhra Cements Limited, Hyd Vs Government of***

Andhra pradesh and Others [3], ***Gimpex Limited, Chennai Vs J.Ashok Kumar and others*** [4]

8. Heard the counsel and perused the impugned order, the respective pleading of the parties and the material available on record.

9. The factual details narrated in almost all the writ petitions appear to be one and the same. Hence, the facts in W.P.No.1883 of 2006 are being adopted. As already referred to supra, the counter affidavit of first respondent is filed in W.P.No.1883 of 2006, whereas counter affidavit of respondents 5 to 7 had been filed in W.P.No.1884 of 2006.

10. It is stated in the writ petition that Survey No.178, Konisa village, Gajapathi Nagara Mandal, Vijayanagaram district is a granite bearing area and leases are granted for colour granite in the said survey number to other granite companies and in the process of the same petitioner had submitted application for grant of quarry lease for colour granite in Sy.No.178 an extent of 41.500 hects., on 27.10.2003 in Form P, duly complying with all the formalities and followed by a sketch drawn to the scale, a treasury challan for Rs.7,500/- towards non refundable application fee and deposit of Rs.4,20,000/- @ of Rs.10,000/- per every hector. The application was submitted to the Assistant Director of Mines and Geology. There were also other applications filed subsequent to the application of the petitioner. Assistant Director of Mines and Geology after inspection and demarcation on 7.2.2005, identified as pink colour granite useful for cutting and polishing and found the area only available on field is 17.00 hects. No objection certificate was issued by the Revenue Department on 11.3.2004 and 13.3.2004. It is also further stated that the

respondents 5 to 7 had filed applications for grant of quarry leases for Road Metal and building stone over the same area in Sy.No.178 on 18.10.2003 and after inspection issued No Objection Certificate in favour of petitioner 11.3.2004 and 13.3.2004. It is also stated that the Assistant Geologist found the mineral as colour granite and it can not be used as Road Metal or building stone, have submitted fresh application on 24.3.2004. The Assistant Director of Mines and Geology forwarded the applications dated 18.10.2003 for Road Metal and Building Stone with his recommendations to the Deputy Director of Mines and Geology. Deputy Director of Mines and Geology, who is the authority concerned under Rule 12(2) for rejection of the same as the mineral is colour granite, rejected the applications of the respondents 5 to 7 in Proceedings No.4992/G/2003, dated 20.6.2003 stating that the available mineral is pink colour granite useful for cutting and polishing which fetches higher revenue. It is also stated that the application filed by the petitioner and others for grant of quarry lease for colour granite was recommended to the Director of Mines and Geology who is the competent authority for granting quarry lease for granite. Respondents 5 to 7 had raised objections before Director of Mines and Geology to treat their applications as first application while considering the applications filed for Road Metal as if filed for granite and further that they alone filed scaled map and the petitioner had not furnished scaled map hence to reject the application of the petitioner and consider their subsequent applications. The Director of Mines and Geology rejected their contention that correct description of the area with reference to survey number along with village map, scaled map submitted by the petitioner - M/s.Galaxy Rockmin Private Limited. It is also stated that the rules contemplate that the application shall be given priority

as per date and granted quarry lease to the petitioner over an extent of 17.00 hects in Sy.No.178 of Konisa village, Gajapathi Nagaram Mandal, Vijayanagaram district for a period of 20 years on 29.7.2005.

11. It is further stated that the application of the respondents 5 to 7 dated 24.3.2004 and 25.10.2004 for colour granite were rejected by the Director of Mines and Geology as the areas applied by them overlap with the prior applicants. Lease deed was entered into on 30.9.2005 for a period of 20 years in Form-G by the Assistant Director of Mines and Geology on behalf of the State and sanction order was issued by the Assistant Director of Mines and Geology in Proc.No.3553/Q/2003, dated 30.9.2005 and the petitioner had been operating the area since then duly depositing the advance seigniorage fee and after obtaining permits from the department from 30.9.2005.

12. It is also further stated that the petitioner received a telegram on 09.10.2005 from the first respondent as follows:

> " Take notice that while issuing proceedings No.35464/R1-2/2003, dated 29.7.2005. The Director of Mines and Geology did not take the priority of applications hence Government desires to review the matter. The matter will be taken up for hearing by the Hon'ble Minister Mines and Geology on 18.10.2005 at 3.00 p.m. in her office chambers in 6th floor, J Block, A.,P.Secretariat, Hyderabad, M/s.Galaxy Rockin Private Limited, M/s.Nataraj Enterprises Granites, M/s.Sri Surya Constructions, M/s.Sunitha Constructions and M/s. Laxmi Constructions are therefore requested to attend the hearing on 15.10.2005 either in person or through an authorized representative without fail to substantiate their claim if any in support of their case."

13. It is stated that the telegram read that to attend for hearing on 15.10.2005. On 15.10.2005 petitioner's representative attended the hearing and submitted his letter that he is in receipt of notice of hearing and revision applications filed by respondents 5 to 7 for which a hearing was called for, copies of the same were not communicated hence requested to furnish a copy of revision applications filed by

respondents 5 to 7 for enabling the petitioner to file a counter and to argue the revision and requested to adjourn the matter to a different date. The 1st respondent received the same and informed that they would communicate copy of the revision application and no arguments were took place on 15.10.2005 and petitioner was also informed that date of hearing would be intimated.

14. It is further stated that surprisingly petitioner received proceedings of the first respondent on 24.1.2006 in Memo No.14796, M.II(1) 2005-5, dated 19.1.2006 setting aside the orders of the Director of Mines and Geology granting quarry lease in proceedings No.35464, R1-2/2003, dated 29.7.2005. It is also stated that revision applications were filed by respondents 5 to 7 as against rejection of their granite quarry lease application and granting the quarry lease to the petitioner dated 29.7.2005. The revisions are filed on 07.10.2005 and a telegram was issued by the first respondent on 08.10.2005 calling for hearing on 15.10.2005. Though hearing had not taken place on 15.10.2005 and copies of revision applications were not served to the petitioner, the order reads that the revision petitioners and the implead party had attended the hearing and presented their grievances and after hearing the grounds of revision, it s felt that the orders of both Deputy Director and Director of Mines and Geology are not in conformity with the Rules. It is further stated that principles of natural justice require an opportunity to the earlier applicants to opt the usage of the mineral and if they are not prepared to take the granite useful for cutting and polishing, the subsequent applications have to be considered. It is also stated that the case of the petitioners should have been considered first. It is also stated that the orders of the Deputy Director of Mines and Geology dated 29.7.2005 granting quarry lease in favour of the petitioner was set

aside with the following directions:

> "Considering these facts, since already the Director of Mines and Geology has granted the leases to the impleaded party, it is decided to divide the area as indicated below;
>
> 1. The entire area available including the excess area arrived at by the Department after grant of the leases may be divided into equal parts, i.e., eastern portion and west portion.
> 2. The present grantees may be allocated one half of the said area and the other half area may be granted to the revision petitioner since they are the first applicants for this area.
> 3. the first option may be given to the applicants at Sl.No.4 and 5 to select the area (i.e., either Eastern half or Western half of the total area) as per priority of serial number of application between them and the rest of the area may be reallocated to the Revision Petitioners as per the priority of serial number of application among them.

15. It is further stated that the Director of Mines and Geology, was directed to issue modified orders to this effect accordingly and ensure that all the parties have proper path to approach their respective quarry areas. The Director of Mines and Geology was also directed to dispose off the implead petition as per priority. All the revision applications were disposed of accordingly. The said orders are being questioned in these revisions as being violative of principles of natural justice and contrary to Rule 35-C(5) of the rules referred to supra.

16. The counter affidavit filed by the first respondent in W.P.No.1883 of 2006 narrated several details. Several of the facts were denied and it was pleaded in para-2 of the counter affidavit that the Assistant Director of Mines and Geology, Vijayanagaram received nine quarry lease applications for Colour Granite and Road Metal and Building Stone from various applicants in Sy.No.178 of Konisa village, Gajapathinagaram mandal, Vijayanagaram district. The details of the said applications pending for grant as on 22.2.2005 given below:

Sl. No.	Name of the applicant	Date of receipt of the ADM&G, VZM	Sy.No.village And Mandal	Mineral applied	Extent in Hects	Remks
1.	M/s.Lakshmi Constructions	18.10.2003	178, Konisa Vg. Gajapathinagaram Mandal	RM & BS	15-00	
2.	M/s.Sri Surya Constructions	-do-	-do-	-do-	15-00	
3.	M/s.Sunitha Constructions	-do-	-do-	-do-	12-00	
4.	M/s.Galaxy Rockmin (p) Ltd.,	27.10.2003	-do-	-do- color granite	41.50	
5.	M/s.Nataraj Enterprises	-do-	-do-	-do-	35-00	
6.	Sri Gayathri Granites	28.2.2004	-do-	RM&BS	5-00	
7.	Sri Lakshmi Constructions	24.3.2004	-do-	Color Granite	10-00	
8.	Sri Surya Constructions	-do-	-do-	-do-	10-00	
9.	Sri Sunitha Constructions	25.10.2004	-do-	-do-	10-00	

17. It was also further stated that the above applicants at Sl.No.1 to 3 and 6, submitted documents as required under Rule 12(3) of the Rules for Road Metal and Building Stone and the applicants 4, 5, 7 to 9 for grant of colour granite as per Rule 12(5) of the Rules. It is also stated that as per Rule 12(5) of the Rules, the applications received for Colour Granite should enclose a Challan for Rs.7,500/- towards application fee and Rs.10,000/- per hect. Towards Security Deposit in the shape of demand draft, and similarly the applicants applied for quarry lease for Road Metal and Building Stone have to pay an application fee of Rs.1,500/-. It is also stated that the applications received in this survey number had been referred to the Mandal Revenue Officer, Gajapathinagaram for land classifications and No Objection Certificate and the Mandal Revenue Officer, Gajapathinagaram issued No Objection Certificate in favour of M/s.Nataraj Enterprises over an extent of 15-00

hects., vide R.C.No.108/2004/T, dated 13.3.2004 and finally the Mandal Revenue Officer, gajapathinagaram had given No Objection Certificate for the total extent of 70-00 hects., vide his R.C.No.108/2004, dated 27.4.2004. It is also further stated in para-4 of the counter affidavit that it is true that the respondents 5 to 7 have filed applications for grant of quarry lease for Road Metal and Building Stone on 18.10.2003. Subsequently, the same respondents 5 and 6 have also applied for colour granite on 24.3.2004 and the 7th respondent on 15.10.2004 after knowing that the rock available in the hillock suitable for cutting and polishing and they had filed an affidavit before the Assistant Director of Mines and Geology, Vijayanagaram to treat their colour granite applications as per the date of receipt of their first application applied for Road Metal and Building stone. As there is no such provision in the Rules to give priority to their applications on par with their earlier applications, the Assistant Director of Mines and Geology, Vijayanagaram basing on the inspection report of the Assistant Geologist, which stated that the area is useful for cutting and polishing, the applications of respondents 5 to 7 had been submitted to the Deputy Director of Mines and Geology, Visakhapatnam for rejection as he is the competent authority to dispose of the application under Rule 12 of the Rules, accordingly the Deputy Director of Mines and Geololy, Visakhapatnam had rejected the said applications on 20.6.2005.

18. It was further pleaded in reply to paras 5 and 6 of the affidavit filed in support of the writ petition to the effect that it is a fact that the quarry lease applications of the petitioner and also M/s.Nataraj Enterprises Granites had been recommended for grant of quarry lease for colour granite over an extent of 17-00 hects in favour of the petitioner (M/s.Galaxy Rock Minerals (p) Ltd.,) and 14-00 hects in favour of

M/s.Nataraj Enterprises Granites basing on the report of the surveyor of the office of the Assistant Director of Mines and Geology, Vizianagaram and consent given by both the parties for reduced extents vide their letter dated 16.2.2005. The subsequent quarry lease applications received for grant of colour granite from the respondents 5 to 7 had been forwarded for rejection to the Director of Mines and Geology, Hyderabad who is the competent authority to dispose of the applications. It is further stated that after considering the proposals of the Assistant Director of Mines and Geology, Vizianagaram, the Director of Mines and Geology, Hyderabad granted two quarry leases for colour granite in favour of M/s.Galaxy Rock Min (P) Limited, and M/s.Nataraj Enterprises over an extent of 17-00 hect and 14-000 hects respectively duly rejecting the quarry lease applications received from the respondents 5 to 7 vide proceedings No.35464/R1-2/2003 dated 29.7.2005. Thereafter, the Assistant Director of Mines and Geology, Vizianagaram executed the lease deed in form 'G' with the grantee and issued work order bearing No.3553/Q/2003, dated 30.9.2005. After getting the work order from the Assistant Director of Mines and Geology, Vizianagaram, the petitioner - M/s.Galaxy Rockmin (P) limited, submitted their opening notice of their quarry on 13.10.2005. The same was received in the Office of the Assistant Director of Mines and Geology, Vizianagaram on 13.10.2005. The Petitioner obtained three dispatch permits from the Assistant Director of Mines and Geology, Vizianagaram on 7.12.2005 for 8.250 M3 on 26.12.2005 for 28.950M3 and on 9.1.2006 for 72.5557M3.

19. It was also further stated in reply to para-7 of the affidavit filed in support of the writ petition, that the quarry lease applications for Road Metal and Building Stone had been rejected by the Deputy Director of Mines and Geology, Visakhapatnam

vide proceeding No.4992/Q/2003, 4989/Z/03 dated 20.6.2005 and the colour granite applications received from M/s.Lakshmi constructions M/s.Surya Constructions and Ms.Sunitha Constructions had also been rejected by the Director of Mines and Geology, Hyderabad vide proceedings No.35464/R1-2/2003, dated 29.7.2005. Aggrieved by the above orders of the Deputy Director of Mines and Geology, Visakhapatnam and Director of Mines and Geology, Hyderabad, the respondents 5 to 7 had filed revisions before the Government, Industries and Commerce under Rule 35-A of the Rules, on the following grounds:

1. Director of Mines and Geology Hyderabad vide proceedings No.35464/R1-2/2003, dated 29.07.2005, rejected their quarry leases application filed on 24.03.2004 for colour granite. Over an extent of 10-00 hectares in the Sy.No.178 Konisa (Village), Gajapathinagaram (Mandal), Vizianagaram District. Since their quarry and lease application is over lapping with their earlier Q.L. Applications of M/s. Galaxy Rockmin Pvt., Ltd., and M/s. Nataraj Enterprises.

2. In this connection, they submit their earlier to the above application, they filed applications for grant of Quarry Lease for road metal and building stone over extent of 15,000 Hects. On 18.10.2003 in the above subject area earlier to M/s. Galaxy Rockmin Pvt., Ltd., and M/s. Nataraj Enterprises.

3. The MRO, Gajapathinagaram, vide his letter No.108/2004/T, dated 12.03.2004 reported that the land in the Sy.No.178 of Konisa (Village) measuring an extent of 80-150 Hectares and classified as “Dibba Poramboke” and issued NOC for grant of Quarry Lease over an extent of 10-00 Hectares, in favour of them in the subject area.

4. Subsequently, based on the above NOC they have filed the application on 24.03.2004, for grant quarry lease for colour granite over an extent of 10,000 Hectares, in the above subject area and requesting the authority to consider the earlier application for conversion of Quarry Lease application for grant of Colour Granite.

5. The Mandal Revenue Office, Gajapathinagaram vide his letter No.108/2004/T, dated 13.03.2004, also given NOC, for grant of Quarry Lease over an extent 14,000 Hects infavour of M/s. Galaxy Rockmin (P) Ltd., an over an extent of 15.00 Hectares in favour of M/s.Nataraj Enterprises covering the total extent of 29-00 Hectares, whereas, Director of Mines and Geology, granted total an extent of 31-00 Hectares, i.e., 17,000 Hectares in favour of M/s. Galaxy Rockmin Private Limited and 14-00 Hectares, in favour of M/s. Nataraj Enterprises respectively.

6. As shown from the applier sketch by M/s. Galaxy Rockmin Private

Limited and M/s. Nataraj Enterprises it is clearly indicates that there is gap area falling over an extent of 4-00 Hectares which is actually applied by them and M/s. Lakshmi Construction. The said gap area, i.e., over an extent of 4,000 hectares also granted by Director of Mines and Geology in favour of M/s. Galaxy Rockmin Pvt., Ltd., which is actually not applied by M/s. Galaxy Rockmin Pvt., Ltd.

7. As per the Mandal Revenue Office surveyed scaled sketch, the total area granted, i.e., 31,000 Hectares (granted 17-00 hectares in favour of M/s. Galaxy Rockmin Pvt., Ltd., and 14-00 hectares in favour of M/s. Nataraj Enterprises) is actually arriving over an extent of 50,000 hectares.

8. In view of the above, they requested the Government to kindly examine the above issues and issue necessary order for re-survey of the subject area and consider their application for grant of Quarry Lease for colour granite over an extent of 10-00 hectares in Sy.No.178 of Konisa (Village), Gajapathinagaram (Mandal), Vizianagaram District. While set aside Director of Mines and Geology, proceedings dated 29.07.2005, since they have filed their applications along with scaled map. Hence, they have claimed the priority of their applications over M/s. Galaxy Rockmin Pvt., Ltd., and M/s. Nataraj Enterprises Quarry lease applications etc."

20. In para-8 of the counter affidavit it was pleaded that the Government had given personal hearing on 15.10.2005 to all the concerned. The revision petitioners as well as the impleaded parties had attended the hearing and presented their grievances. The Government after hearing the arguments of the petitioners, impleaded parties and after going through the material and records, had observed that the orders issued by both the Deputy Director of Mines and Geology, Visakhapatnam and Director of Mines and Geology, Hyderabad are not in conformity with rules and against the principles of natural justice and the applications filed by the revision petitioners are prior to the applications of the impleaded party, i.e., petitioner herein. Even though they applied for road metal and building stone, when the material is found to be useful for better purpose, they inclined to make use of the said material for better purpose. The principles of natural justice require an opportunity to the earlier applicants to opt the usage of the mineral and if they are not prepared to take granite useful for cutting and polishing,

the subsequent applications would have been considered. Whereas when they were interested to make use of the material for better purpose, their case ought to have been first considered. Incidentally in a granite quarry, lot of waste is generated and the waste can be used for road metal and building stone and the useful material will be used for cutting and polishing.

21. In para-9 of the counter affidavit it was stated that in the circumstances, the rejection proceedings dated 20.6.2005 of the Deputy Director of Mines and Geology, Visakhapatnam and the orders issued by the Director of Mines and Geology, vide his proceedings No.35464/R1-2/2003, dated 29.7.2005 are set aside. The Government while taking into consideration all the facts, it is decided to divide the area indicated bellow:

1. The entire area available including the excess area arrived at by the Department after grant of the leases may be divided into equal parts, i.e., eastern portion and west portion.
2. The present grantees may be allocated one half of the said area and the other half area may be granted to the revision petitioner since they are the first applicants for this area.
3. the first option may be given to the applicants at Sl.No.4 and 5 to select the area (i.e., either Eastern half or Western half of the total area) as per priority of serial number of application between them and the rest of the area may be reallocated to the Revision Petitioners as per the priority of serial number of application among them.

22. It is also stated that the Government directed the Director of Mines and Geology to issue modified orders as mentioned above and all the parties concerned had proper path to approach their respective quarry leases. The Government through Memo No.14796/M.II(1)/05-5 dated 19.1.2006 had disposed all the revision applications, which is impugned in these writ petitions.

23. In paras-11 to 21 for every ground raised in the affidavit filed in support of the writ petition, specific reply had been given.

24. In W.P.No.1884 of 2006 in the counter affidavit filed by respondents 5 to 7 it was pleaded as hereunder:

In para-3 of the counter it was stated that it is not true that the petitioner company submitted the application for grant of quarry lease in Sy.No.178 on 27.10.2003 duly complying all the formalities followed by a sketch drawn to the scale. In fact, the petitioner company did not submit a scaled map. The petitioner company did not disclose any scale on the map submitted along with the application so as to identify the area on ground and the said fact is admitted by the second respondent vide proceedings dated 29.7.2003. The second respondent had clearly observed that the application cannot be rejected on the ground that scaled map had not been submitted. It is also further observed by the second respondent that the petitioner had given correct description of the area with reference to the survey numbers. In fact there is only one Sy.No.178 and as such the area applied for within the said survey number cannot be identified without furnishing a scaled map. Therefore, the contention of the petitioner that it submitted a scaled map is not correct. It is also further denied that respondents 5 to 7 had made applications subsequent to the application of the petitioner. It is pertinent to mention here that while issuing that No Objection Certificate to the petitioner and as well as respondents 5 to 7 the M.R.O. surveyed the land and identified the areas, prepared a map with the assistance of the surveys. The M.R.O. vide letter No.108/2004/T, dated 12.3.2004 reported that the land in survey No.178 measuring to an extent of 80.150 hectors and granted N.O.C. in favour of the respondent Nos.5 to for 10 hectos each, whereas on 13.2.2004 he granted N.O.C. only in relation to 14 acres in favour of M/s.Galaxy Rockmin Private Limited and 15 acres in favour of

Nataraj Enterprises. However, later the second respondent had entered into the mining lease to the extent of 17 hectors in favour of M/s.Galaxy Rockmin Private Limited and 14 hectors in favour of Nataraj Enterpirses.

25. It was also further pleaded that it is true that respondents 5 to 7 had filed applications for grant of quarry lease on 18.10.2003 after they filed applications for Road Metal and Building stone in sy.No.178. It was found that the colour granite is available in fact initially the Assistant Director, Mines and Geology intended to conduct survey on 24.2.2004, 7.7.2004, but inspection and survey was conducted on 28.10.2004. As already by that time after they applied for Road Metal and Building Stone, colour granite was found, they requested to treat their applications for road metal and building stone as an application for granite. Since the second respondent is the competent authority for receiving the applications, they again submitted applications for colour granite on 24.3.2004 and 25.10.2004 for an area of 10 hectors each for respondents 5 to 7 and that they specifically requested that since they were first applicants their applications may be considered.

26. It is further stated that the third respondent had by proceedings dated 20.6.2005 rejected their applications on the ground that the available stone is colour granite. In fact, by that time they had already requested on 9.12.2004 for treating their earlier applications submitted for road metal and building stone as an application for granite. Again they requested on 10.1.2005, and in spite of their request the second respondent had rejected their applications vide order dated 29.7.2005. It is also stated that though the second respondent was aware of their request for conversion he did not consider the same.

27. It is also further pleaded in para-7 that it is true that they raised legal

objections before the second respondent that the petitioner did not file scaled map along with the application and as such its application had to be rejected. It is also false that the second respondent had rejected their contention on the ground that correct description of area with reference to survey number along with scaled map was submitted by the petitioner. A perusal of the proceedings dated 29.7.2005 issued by the second respondent shows that the second respondent had admitted that the scaled map was not submitted, but the application of the petitioner was accepted on the ground that such scaled map need not be submitted. Rule-12(5) of the Rules clearly contemplate that along with the application a scaled map had to be submitted so as to identify the property on ground. The rules do not contemplate that the application should be given priority as per the date. The Rule only contemplates that the applications should only be disposed of basing on the date of receipt. The rule also contemplates that the Government may grant lease to any of the applicants who had applied later. In this case they had applied for road metal and building stone on 18.10.2006 and after they applied, it was discovered by the respondents in the process that colour granite is available and they made a request for treatment of their applications for colour granite and also filed separate applications on 24.3.2004.

28. Specific stand was taken that the representatives of the petitioner also attended the hearing and that proper opportunity was given to all the parties. It was also further pleaded in para-12 of the counter affidavit that on inquiry about the orders that may be passed by the first respondent, they were informed that the orders may be passed on 16.1.2006, and thinking that the first respondent could pass orders on 16.1.2006, and in case if some favourable orders are passed, on

apprehension that the petitioner may question the same on advise they got filed caveat petitions and they were advised that no prejudice would be caused, if adverse orders were passed against them because of filing of caveat and it would be always open for them to question the orders. In those circumstances they were constrained to file caveat applications. However, the first respondent did not pass any orders on 16.1.2006 but the order was passed on 19.1.2006.

29. It was stated at para-14 of the counter that the first respondent had found that the entire available land was in excess and the contention of the petitioner that the area is only 31 hectors is wrong and in fact the petitioner without submitting a scaled map had shown more than 60 hectors on ground as 31 hectors on map, i.e., a condensed map had been submitted because the lease was granted for 31 hectors on map which was 60 hectors on ground. The first respondent found that the land is in excess and in fact had provided benefit to the petitioner by giving first option. The first respondent ought to have rejected the application of the petitioner since required documents were not submitted along with applications and more over found that excess land is available which fact establishes that the petitioner tried to mislead the authority.

30. It was further pleaded that a perusal of the impugned order dated 19.1.2006 clearly shows that a personal hearing was conducted on 15.10.2005 with all the parties concerned. It is specifically stated that the revision petitioners therein as well as implead parties had attended the hearing and presented their grievance. This shows that the writ petitioners had also participated in the enquiry. Therefore, full opportunity was afforded to the writ petitioners. Having availed the opportunity of participation the petitioner cannot contend that the principles of natural justice

had been violated and Rule 35-C(5) of the Rules.

31. A stand was taken that the first respondent taking into consideration the entire area and with a view to avoid exploitation had made an order keeping in view the equitable distribution.

32. On a careful perusal of the impugned order and also taking into consideration the way in which the matter was disposed of, this Court is of the opinion that though several factual details had been narrated in detail in the impugned order, Rule 35-C(5) of the Rules had not been complied with and the undue haste with which the revision applications were disposed of and the impugned orders were made would clearly go to show that same is in violation of principles of natural justice.

33. It may be appropriate to have a look at the relevant rule, Rule 35-C(5), specifies that on receipt of the application the Director or State Government shall send a copy of the application to each of the parties impleaded under sub-rule (3) specifying a date on or before which he may make his representation if any against the appeal or revision application filed under sub-rule(1).

34. On a careful analysis of the facts, this Court is of the considered opinion that the said rule had not been complied with and no appropriate opportunity had been given to all the parties who were interested in having a hearing. Several of the decisions referred to supra were cited and elaborate submissions were made both on factual aspects and also on certain questions of law involved in the matter.

35. Quasi judicial authorities while dealing with the matters and disposing of matters are expected to be cautious in affording opportunity to the parties and also in following the Rules governing the field and in observing the principles of natural justice. The practice of making order in undue haste in disregard of the principles of

natural justice and the relevant Rules governing the field, may have to be deprecated.

36. Inasmuch as the common impugned order questioned in all these writ petitions, is being set aside on the ground that Rule 35-C(5) referred to supra had not been complied with and the same was made in violation of principles of natural justice and also in undue haste, this Court directs the competent authority to give reasonable opportunity to all the parties by complying with the Rule aforesaid and pass appropriate orders by taking all the facts and circumstances into consideration and also the decisions cited by both the parties and also taking into consideration the respective stand taken by the parties in the respective grounds of the pleadings of the parties before this Court.

37. With the above observations, the impugned order in Memo No.14796/M.II(1)/2005-06 dated 19.1.2006 is hereby quashed as being violative of principles of natural justice and also contrary to rule 35 of the Rules referred to supra and the matter is remitted to the Government for the purpose deciding the matter afresh in the light of the observations specified supra.

38. Accordingly the writ petitions are allowed to the extent indicated above. Inasmuch the matter is being remitted again to the Government, for the purpose of affording opportunity to all the parties concerned and to make orders afresh in accordance with law, the parties to the litigation to bear their own costs.

39. It is needless to say that the Government, the 1st respondent in W.P.No.1883 of 2006 to dispose of the matter, in accordance with law, at an early date.

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Mdaa

[1] 1997(1) ALD 468

[2] 2005(5) ALD 194

[3] 2000(6) ALD 404 (DB)

[4] 2005(1) ALD 369 (DB)